

(c) Remarks

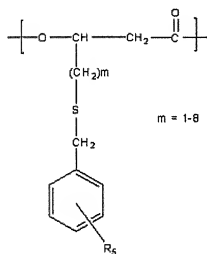
This application has been reviewed in light of the Office Action dated December 27, 2007. Claims 1, 2, and 4 are presented for examination, in which claim 1 is the sole independent claim. Claims 18-36 have been cancelled without prejudice or disclaimer of subject matter. Claims 3 and 5-17 have been previously cancelled. Favorable reconsideration is requested.

Applicants note that the nonstatutory obviousness-type double patenting and the anticipation rejections of claims 18-36 have been rendered moot by the cancellation of the claims.

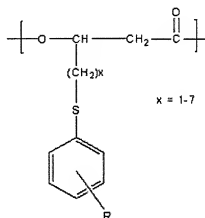
Claims 1 and 2 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 20, and 21 of U.S. Patent No. 6,808,854 ("Imamura"). The Examiner alleged that the claims of the present application and the claims of Imamura are not patentably distinct due to overlap in the claimed subject matter. The Examiner stated that chemical structure of certain polyhydroxyalkanoate (PHA) recited in claims 1 and 2 of the present application when R_z in claim 1 is selected from Formula (11) can be the same as chemical structures claimed by Imamura. Applicants respectfully disagree.

Claim 1 of the present invention is directed to a PHA copolymer comprising at least, per polymer molecule, one kind of unit selected from the group consisting of chemical formulae (1) and (2), and at least one unit selected from the group consisting of chemical formulae (3) to (6). Applicants note that chemical formula (3) wherein R_z is selected from chemical formula (11) is different from chemical formula (3) of Imamura. Chemical formula (3) with R_z of chemical formula (11) of the present application contains

a methylene group in between the sulfur atom and the phenyl ring. In contrast, chemical formula (3) of Imamura lacks the methylene group between the sulfur atom and the phenyl ring. *See* figures below. None of the claims of Imamura recites chemical formula (3) with Rz of chemical formula (11) of the present application. Accordingly, Applicants submit that claim 1 is patentably distinct from each of claims 1, 2, 20, and 21 of Imamura and respectfully request the withdrawal of the double patenting rejection.



Chemical formula (3) with Rz of chemical formula (11) in the present application



Chemical formula (3) of Imamura

Claims 1, 2, and 4 have been rejected under 102(a) (as indicated in the Interview Summary dated March 17, 2008) as being anticipated by EP 1253162 (Imamura '162). The Examiner noted that Imamura '162 is equivalent to Imamura (U.S. Patent No. 6,808,854). Claims 1, 2, and 4 have also been rejected under 102(a) and 102(e) (as indicated in the Interview Summary dated March 17, 2008) as being anticipated by Imamura. The Examiner stated that Imamura discloses PHA comprising the unit of

formula (1) and/or the unit of formula (2), and further comprising the unit of formula (3) of the present application. Further, the Examiner indicated that the copolymer of claim 2 of Imamura comprises the same units as a copolymer of claim 1 of the present invention when Rz is selected from chemical formula (11). Applicants respectfully disagree.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP 2131 (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). As noted and shown in the figures above, Imamura does not teach or suggest chemical formula (3) with Rz of chemical formula (11) of the present application. Accordingly, Applicants respectfully submit that claim 1 is patentable over Imamura.

The other claims in this application are each dependent from claim 1 discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants submit that the present application is now in condition for allowance. Accordingly, it is respectfully requested that the claims be allowed and the case passed to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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